



ABAC Adjudication Panel Determination No 52/22

Product: Alcohol
Company: Ritchies IGA + Liquor
Media: Facebook
Date of decision: 4 August 2022
Panelists: Professor The Hon Michael Lavarch (Chief Adjudicator)
Ms Jeanne Strachan
Professor Louisa Jorm

Introduction

1. This determination by the ABAC Adjudication Panel (“the Panel”) concerns Facebook posts being made by Ritchies IGA + Liquor (“the Company”). It arises from a complaint received on 27 July 2022.
2. Alcohol marketing in Australia is subject to an amalgam of laws and codes of practice, that regulate and guide the content and, to some extent, the placement of marketing. Given the mix of government and industry influences and requirements in place, it is accurate to describe the regime applying to alcohol marketing as quasi-regulation. The most important provisions applying to alcohol marketing are found in:
 - Commonwealth and State laws:
 - Australian Consumer Law – which applies to the marketing of all products or services, and lays down baseline requirements, such as that marketing must not be deceptive or misleading;
 - legislation administered by the Australian Communications and Media Authority – which goes to the endorsement of industry codes that place restrictions on alcohol advertising on free to air television;
 - State liquor licensing laws – which regulate retail and wholesale sale of alcohol, and contain some provisions dealing with alcohol marketing;

- Industry codes of practice:
 - AANA Code of Ethics – which provides a generic code of good marketing practice for most products and services, including alcohol;
 - ABAC Responsible Alcohol Marketing Code (“ABAC Code”) – which is an alcohol specific code of good marketing practice;
 - certain broadcast codes, notably the Commercial Television Industry Code of Practice – which restricts when advertisements for alcohol beverages may be broadcast;
 - Outdoor Media Association Code of Ethics and Policies – which place restrictions on the location of alcohol advertisements on outdoor sites such as billboards.
3. The codes go either to the issue of the placement of alcohol marketing, the content of alcohol marketing or deal with both matters. The ABAC deals with both the placement of marketing i.e. where the marketing was located or the medium by which it was accessed and the content of the marketing irrespective of where the marketing was placed. The ABAC scheme requires alcohol beverage marketers to comply with placement requirements in other codes as well as meeting the standards contained in the ABAC.
 4. For ease of public access, Ad Standards provides a common entry point for alcohol marketing complaints. Upon a complaint being received by the Ad Standards, a copy of the complaint is supplied to the Chief Adjudicator of the ABAC.
 5. The complaint is independently assessed by the Chief Adjudicator and Ad Standards and streamed into the complaint process that matches the nature of the issues raised in the complaint. On some occasions, a single complaint may lead to decisions by both the Ad Standards Community Panel under the AANA Code of Ethics and the ABAC Panel under the ABAC if issues under both Codes are raised.
 6. The complaint raises concerns under the ABAC Code and accordingly is within the Panel’s jurisdiction.

The Complaint Timeline

7. The complaint was received on 27 July 2022.
8. The Panel endeavours to determine complaints within 30 business days of receipt of the complaint, but this timeline depends on the timely receipt of materials and advice and the availability of Panel members to convene and decide the issue. The complaint was completed in this timeframe.

Pre-vetting Clearance

9. The quasi-regulatory system for alcohol beverage marketing features independent examination of most proposed alcohol beverage marketing communications against the ABAC prior to publication or broadcast. Pre-vetting approval was not obtained for the advertising.

The Marketing

10. The complaint concerns posts marketing alcohol being made to the Ritchies Singleton Plaza Facebook page, which is not age-restricted, and the sharing of these posts to further non age-restricted Facebook pages.

The Complaint

11. The complainant is concerned about the advertising as follows:
 - *I'm not offended by alcohol, but I am concerned that a local supermarket is making many Facebook posts, advertising many alcohol products on a publicly available Facebook page, and then sharing these posts onto various local Singleton community Facebook 'groups'.*
 - *I am not sure if this marketing meets the requirements of the Australian Alcoholic Beverages Advertising Code, especially with the requirement to limit the visibility of these posts to under 18s? I assume that people of all ages can currently see the posts if they're on public Facebook 'groups' where age isn't restricted?*

The ABAC Code

12. Part 3 of the ABAC Code provides that a Marketing Communication must NOT:

- (b)(iv) be directed at Minors through a breach of any of the Placement Rules.

13. Part 6 of the ABAC Code contains the following definition:

Placement Rules means:

...

- (ii) A Marketer must utilise Available Age Restriction Controls to exclude Minors from viewing its Marketing Communications.
- (iii) If a digital, television, radio, cinema or print media platform does not have age restriction controls that are capable of excluding Minors from the audience a Marketing Communication may only be placed where the audience is reasonably expected to comprise at least 75% Adults (based on reliable, up-to-date audience composition data, if such data is available).
- (iv) A Marketing Communication must not be placed with programs or content primarily aimed at Minors.

...

Available Age Restriction Controls means age restriction, targeting or affirmation technologies available to restrict a Marketing Communication to Adults, but this does not require a third party platform, website or account that is not primarily related to alcohol.

The Company's Response

14. The Company responded to the complaint by email on 3 August 2022. Its principal comments were:

- Thank you for bringing to our attention the complaint regarding liquor posts on our Singleton Supermarket Facebook page.
- We have investigated the complaint and apologise for the error. The posts featured in this complaint were by a staff member at our Singleton store who inadvertently posted images on our Singleton Supermarket page rather than on our dedicated Singleton Liquor page, as is our practice.

- For all our stores, we maintain separate Supermarket and Liquor Facebook pages. Our Liquor pages are set with 18+ minimum age visibility restrictions.
- We take our responsibilities with regard to Liquor posts seriously and, on receipt of your email, have:
 - Audited and removed all alcohol posts from the Singleton Supermarket page.
 - Moved all liquor advertising content to our Singleton Liquor Facebook page, which is visible only to users 18+;
 - Scheduled retraining and cautioned our relevant employee;
 - Communicated with all our staff to remind them of our Company Policy with regard to liquor content. Our Liquor posts should only be posted at store level if posted to our assigned Liquor Facebook page for each store, which is set with an 18+ restriction.
 - Liquor posts will only appear on our Supermarket pages when authorised and prepared by our Head Office, provided the appropriate 18+ restriction is set for the audience of that post.
- We recognise our responsibility to use all reasonable endeavours to ensure liquor is advertised exclusively to an audience with an 18+ restriction.
- We apologise for our error and believe that the additional actions we have undertaken to date will mitigate the risk of further error.

The Panel's View

15. Ritchies is one of Australia's largest independent supermarkets and liquor stores, with 55 stores throughout Victoria and NSW, and a further two in Queensland. One store in the group is located in the NSW Hunter Valley town of Singleton. It is the Facebook account of the Singleton Plaza store which has attracted the complaint.
16. The Singleton store is a mixed business which is primarily a general supermarket but which also stocks alcohol products. Pursuant to section 30 of the NSW Liquor Act, a supermarket can hold a liquor license to sell packaged liquor products for consumption off-site. The ABAC scheme applies to alcohol retailers and this includes supermarkets selling alcohol products.
17. The complainant points out that the Facebook account for the supermarket contains numerous posts for alcohol products interspersed with posts about groceries. The concern is not about the content of the alcohol product posts as

such but that the Facebook account has no age restriction controls in place and hence the posts can be freely viewed by under 18-year-olds. This concern brings into play the ABAC Placement Rules.

18. The Placement Rules have the policy aim that alcohol marketing should be directed toward adults and to the extent possible away from minors. The Rules endeavour to achieve this goal by creating obligations on marketers to use the technical capacity of different media to target the audience of alcohol marketing communications. Placement Rule 2 provides that if a media platform such as Facebook has age restrictions controls available, then a marketer must use those controls to exclude minors.
19. The Company advised that it maintains two separate Facebook pages. One page is for the general supermarket and the second page is for its alcohol products. The Company explains that its alcohol product Facebook page is age-restricted and that unfortunately human error resulted in the posts being made to its supermarket Facebook page. Upon receiving the complaint, the alcohol posts were removed from the general page.
20. The complainant also raised a concern that the alcohol marketing posts were potentially shared to other non age-restricted Facebook accounts. Facebook advises that its age restriction controls do not permit the sharing of age-restricted content to other accounts that are not age-restricted. This means that if the Company adheres to its policy of only posting liquor advertising to its age restricted page, it should not be possible to share them to a non age-restricted environment.
21. It is acknowledged that the Company has initiated training and other measures to limit the possibility of the problem arising again. That said, it is clear that a breach of the ABAC Placement Rule has occurred and the complaint is upheld.